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Application No.: 10/665,663

Inventor(s): Peter Worthington Hamilton, et al.

Filed: September 28, 2003

Docket No.: 9075ML

Confirmation No.: 8571

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/665,663  
Inventor(s) : Peter Worthington Hamilton  
Filed : September 18, 2003  
Art Unit : 1771  
Examiner : Daniel R. Zirker  
Docket No. : 9075ML  
Confirmation No. : 8571  
Customer No. : 27752  
Title : Multifunctional Adhesive Food Wraps

**APPEAL BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on August 23, 2006.

A timely Notice of Appeal was filed on November 21, 2006.

**REAL PARTY IN INTEREST**

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

**RELATED APPEALS AND INTERFERENCES**

There are no known related appeals, interferences, or judicial proceedings.

**STATUS OF CLAIMS**

Claims 1-5, and 7-19, are rejected. Claim 6 has been cancelled.

The rejection of claims 1-5, and 7-19, is appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

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STATUS OF AMENDMENTS

An Amendment was filed on October 20, 2006 in response to the Final Office Action. According to the Advisory Action of November 7, 2006, this amendment has been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

As provided in independent claim 1, the invention comprises a multifunctional food wrap. The wrap comprises a material web having a first active side and a second side. The material web comprises a plurality of protrusions. The protrusions are integral with the first active side and the second side. The protrusions have spaces between them. The material web also comprises an adhesive disposed upon its first active side within the spaces between the protrusions. The adhesive comprises a first secondary functional element. The material web also comprises a second secondary functional element disposed within the material web. The second secondary functional element is disposable beyond the protrusions in response to an application of an external force to the multifunctional food wrap. See the specification at pages: 1 line 23 - 2, line 8, pages 2, line 19 - 3, line 26, pages 5, lines 3 - 15, and figure 6, all items in the figure.

As provided in independent claim 10, the invention comprises a multifunctional food wrap. The wrap comprises a material web comprising one or more layers. The material web comprises a first active side and a second side. The material web further comprises a plurality of protrusions. The protrusions are integral with the first active side and the second side. The protrusions have spaces between them. The material web also comprises an adhesive disposed upon its first active side within the spaces between the protrusions. The material web also comprises a secondary functional element disposed within the web material. See the specification at pages: 1 line 23 - 2, line 8, pages 2, line 19 - 3, line 26, pages 5, lines 3 - 15, and figure 6, all items in the figure.

As provided in independent claim 15, the invention comprises a multifunctional food wrap. The wrap comprises a material web comprising one or more layers. The material web comprises a first active side and a second side. The material web further comprises a plurality of protrusions. The protrusions are integral with the first active side and the second side. The protrusions have spaces between them. The material web also

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comprises an adhesive disposed upon its first active side within the spaces between the protrusions. The material web also comprises a secondary functional element disposed upon and integral with the protrusions. See the specification at pages: 1 line 23 - 2, line 8, pages 2, line 19 - 3, line 26, pages 5, lines 3 - 15, and figure 6, all items in the figure.

#### GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-5, and 7-19 are rejected under 35 USC §112 P2.
2. The incorporation by reference of matter contained in a US patent.
3. Claims 1-5, and 7-19 are rejected under 35 USC §112 P1.
4. Claims 1-5, and 7-19 are rejected under 35 USC §103 as unpatentable over Hamilton, et al. (US 5,968,633).

#### ARGUMENTS

1. The rejection of claims 1-5, and 7-19 under 35 USC §112, P2, is improper and
2. The incorporation by reference of matter from an incorporated US patent is not improper.

The Advisory Action provides that "certain of the 35 USC §112, 2nd paragraph rejections have been overcome, however several still remain". As the Examiner has elected not to distinctly indicate which of the 35 USC §112, P2 rejections have been overcome, all such rejections will necessarily be addressed by this Brief.

The Examiner rejects claims 1-5 and 7-19 under 35 USC §112 P2 as being indefinite for failing to particularly point out and distinctly claim the invention. The Examiner points to a number of "informalities" in the claim language.

Appellant has amended claims 1 and 9 in response to the identified informalities noted in the Office Action regarding the term "secondary function" in claim 1 and "at least one" in claim 9. The Amendment has been entered. The rejected term, "secondary function", has been replaced with the term "secondary functional element". The rejected term "at least one" has been removed from the claim.

The Examiner provides that adhesive may be a secondary functional element and that this renders the claims indefinite. Appellant respectfully submits that a claim which

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provides that a multifunctional food wrap comprises an adhesive, which comprises a first secondary functional element which may in turn be an adhesive, is still definite in that the limits of the invention are defined by the claim. The Examiner is not clear as to how the current language of the claims is ambiguous or indefinite.

The Examiner provides that the claim terms "chemical means" and "physical means" are not described in the specification. Appellant submits that the terms "chemical means" and "physical means" are described in the Specification from page 5, line 4 to page 14, line 14.

The Examiner provides that the claim term "first active side" fails to find any proper support and that Appellant has improperly sought to support this term by way of a US patent, incorporated into the specification by reference. The Examiner provides:

"The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).

4. The attempt to incorporate subject matter into this application by reference to US patent 6,194,062 is ineffective because mere citation of the patent, without more, in the specification is inadequate to incorporate by reference into the claims the otherwise non disclosed subject matter describing the newly presented and nowhere disclosed term "first active side", applicants comments to the contrary notwithstanding."

Appellant respectfully directs the Board to 37 CFR 1.57(c) which reads in part: "Essential material" may be incorporated by reference, but only by way of an incorporation by reference to a U.S. patent or U.S. patent application publication, which patent or patent application publication does not itself incorporate such essential material by reference.

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Appellant's specification, page 2, lines 20-22, provides that all documents cited in the specification are in relevant part, incorporated into the specification by reference. US patent 6,194,062 is cited at page 4, line 27.

The Examiner provides that the steps taken by Appellant to incorporate the text of US patent 6,194,062 into the specification by reference are inadequate but has neglected to support this contention with any authority or any description as to the nature of the inadequacies rendering a response difficult.

Appellant has properly incorporated a US patent into the specification which in turn does not incorporate the essential material by reference. Support for the term "active side" may be found in incorporated US patent 6,194,062 at col. 5, line 52 - col. 6, line 34. Appellant requested that the Examiner provide a citation to the authority under which this rejection was made, as the only authority cited 37 CFR §1.57(f), relates to an amendment for the insertion of material, but not to the contention at the root of the rejection. No additional authority has been cited. Appellant submits that these rejections under 35 USC §112, P2, and regarding the incorporation by reference of matter in a US patent are not well founded and should be overturned.

3. The rejection of claims 1-5, and 7-19, under 35 USC §112, paragraph 1.

The Examiner rejects claims 1-5, and 7-19, under 35 USC §112, first paragraph based upon the presence of new matter in the claims as amended. Specifically, the Examiner cites the language "disposed upon isurentegral with" as being unsupported in the specification. Appellant respectfully points the Board to the following portion of the specification, found at page 5, lines 10-15:

The secondary function can be disposed integrally, coextensively, or intimately with the adhesive, integrally, coextensively, or intimately with the material web, and/or integrally, coextensively, intimately, within a protrusion that is integral with the material web, integrally, coextensively, and/or intimately from a capping substrate through perforations in a web substrate, or combinations thereof.

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Appellant submits that this portion of the specification provides adequate support for the disputed claim element. The rejection should be overturned.

4. The rejection of claims 1-5, and 7-19, as unpatentable under 35 USC §103 over Hamilton, et al., US 5,968,633.

Claims 1- 5 and 7 - 19 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hamilton, et al., U.S. Patent No. 5,968,633. Appellant submits that the Examiner has failed to establish a *prima facie* case of obviousness as required. Specifically, the cited reference does not teach or suggest all of the elements set in the claims. The *Hamilton* reference does not teach or suggest all of any of the claimed combinations. The reference does not teach the disposition of the adhesive upon a surface of a web material as a first secondary functional element together with a second secondary functional element disposed within the web material. The reference does not teach an adhesive disposed between protrusions together with a secondary functional element disposed integral with the protrusions. That portion of the reference cited by the Examiner describes portions of these combinations, but does not teach or suggest all of the elements of any of the claimed combinations in a single embodiment.

The Examiner supports this rejection by citing a portion of the reference which teaches the combination of functional elements upon different sides of a web or upon different locations of the web but not necessarily in the claimed combination of dispositions.

The reference fails to teach or suggest each of the limitations of the invention as claimed. The claimed features are not inherently present in the reference. The reference does not support a *prima facie* case of obviousness under 35 USC §103(a). Appellant respectfully requests that the rejection be overturned.

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SUMMARY

In view of all of the above, it is respectfully submitted that Appellant has properly rebutted the rejections under 35 USC §112, P1 and P2, and also the rejection under 35 USC §103. Each of the rejections should be overturned.

Respectfully submitted,

THE PROCTER &amp; GAMBLE COMPANY



Signature

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### CLAIMS APPENDIX

1. (Rejected) A multifunctional food wrap comprising:
  - (a) a material web having a first active side and a second side, said material web comprising a plurality of protrusions, said protrusions being integral with said first active side and said second side, said protrusions having spaces therebetween;
  - (b) an adhesive disposed upon said first active side of said material web within said spaces between said protrusions;
  - (c) wherein said adhesive comprises a first secondary functional element, and
  - (d) a second secondary functional element disposed within said web of material, said second secondary functional element being disposable beyond said protrusions in response to an application of an external force to said multifunctional food wrap.
2. (Rejected) The multifunctional food wrap of Claim 1 wherein said material web is selected from the group consisting of paper, polymeric films, plastic films, cloths, fabrics, wovens, nonwovens, laminates, metal foils, coated papers, and combinations thereof.
3. (Rejected) The multifunctional food wrap of Claim 2 wherein said secondary functional elements are selected from the group consisting of chemical means, physical means and combinations thereof.
4. (Rejected) The multifunctional food wrap of Claim 3 wherein said chemical means is selected from the group consisting of antimicrobial protection, food preservation, atmosphere modification, odor elimination, product spoilage indication, freezer burn inhibition, temperature indication, nutrition and dietary benefits, flavor enhancement, moisture absorption, moisture control, enhancing microwave cooking, heating, cooling, and combinations thereof.
5. (Rejected) The multifunctional food wrap of Claim 3 wherein said physical means is selected from the group consisting of atmosphere modification, product insulation, and combinations thereof.

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6. (Canceled)
7. (Rejected) The multifunctional food wrap of Claim 1 wherein said material web comprises at least one layer.
8. (Rejected) The multifunctional food wrap of Claim 1 wherein said plurality of protrusions comprise an amorphous pattern.
9. (Rejected) The multifunctional food wrap of Claim 1 wherein said adhesive and said secondary functional element are disposable beyond said protrusions in response to an application of an external force to said multifunctional food wrap.
10. (Rejected) A multifunctional food wrap comprising:
  - (a) a material web comprising one or more layers, said material web comprising a first active side and a second side, said material web further comprising a plurality of protrusions, said protrusions being integral with said first active side and said second side, said protrusions having spaces therebetween;
  - (b) an adhesive disposed upon said first active side of said material web within said spaces between said protrusions; and,
  - (c) at least one secondary functional element disposed within said web material.
11. (Rejected) The multifunctional food wrap of Claim 10 wherein said web material is a co-extruded film.
12. (Rejected) The multifunctional food wrap of Claim 11 wherein said co-extruded film comprises at least one tie layer, said tie layer comprising said at least one secondary functional element.
13. (Rejected) The multifunctional food wrap of Claim 10 further comprising a substantially hydrophobic back sheet attached to said second side of said multifunctional food wrap.

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14. (Rejected) The multifunctional food wrap of Claim 10 wherein said at least one secondary functional element is selected from the group consisting of chemical means, physical means and combinations thereof.
15. (Rejected) A multifunctional food wrap comprising:
  - (a) a material web comprising at least one layer, said material web having a first active side and a second side, said material web comprising a plurality of protrusions integral with said first active side and said second side, said protrusions having spaces therebetween;
  - (b) an adhesive disposed upon said first active side in said spaces between said protrusions; and,
  - (c) at least one secondary functional element disposed upon, and integral with, said protrusions.
16. (Rejected) The multifunctional food wrap of Claim 15 wherein said adhesive comprises a second at least one secondary functional element.
17. (Rejected) The multifunctional food wrap of Claim 16 wherein said protrusions are rupturable, said at least one secondary functional element being disposable from said protrusions in response to said external force.
18. (Rejected) The multifunctional food wrap of Claim 17 wherein said protrusions further comprise a weak region, said at least one secondary functional element being releasable from said protrusion through said weak region in response to said external force.
19. (Rejected) The multifunctional food wrap of Claim 15 wherein said at least one secondary functional element is selected from the group consisting of chemical means, physical means and combinations thereof.

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#### EVIDENCE APPENDIX

None

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**RELATED PROCEEDINGS APPENDIX**

None

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